86 - 1301

No. .....

In The
Supreme Court of the United States
October Term, 1986

JOHN L. CHEEK,

Petitioner,

vs.

THOMAS P. BECK, GEORGE W. DUNNE, and EDWARD J. ROSEWELL,

Respondents.

On Writ of Certiorari to the Court of Appeals of the United States for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

JOHN L. CHEEK
In Proper Person
795 Wellington Ave.
Elk Grove, Ill. 60007
(312) 439-2045

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

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QUESTION PRESENTED

The only question for the court to determine is whether the respondents who are compeled by law to take an oath or affirmation to support the U.S. Constitution when required to pay a debt for the State of Illinois which was created by compelled State jury duty service can tender a check to the petitioner which is not redeemable in gold or silver coin rather than gold or silver coin in disregard of Article I, Section 10, clause 1 of the Constitution which states that "no State shall . . . make any Thing but gold and silver Coin a Tender in Payment of Debts".

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DENIAL BELOW

The District Court judgment of dismissal is reproduced as Appendix "A1", and the order of Judge Getzendanner is reproduced as Appendix "A2".

The Court of Appeals judgment affirming the District Court and adding costs is reproduced as Appendix "B1", and the order of the judges is reproduced as Appendix "B2".

———o———

GROUNDS OF JURISDICTION OF SUPREME COURT

This writ arises from the judgment of the Court of Appeals entered on November 24, 1986.

The jurisdiction of the Court is invoked under the provisions of 28 U.S.C. Sec. 1254(1).

———o———

APPLICABLE CONSTITUTIONAL PROVISIONS AND STATUTES

Congress is given power in Article I, Section 8, clause 5 of the U.S. Constitution to:

> coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

Article I, Section 10, clause 1 of the Constitution states, in part, as follows:

> No State shall . . . make any Thing but gold and silver Coin a tender in Payment of Debts;

Public Law 90-29 (81 Stat. 77) states, in part, at Section 2 as follows:

> Silver certificates shall be exchangeable for silver bullion for one year following the enactment of this Act. Thereafter they shall no longer be redeemable in silver . . .

31 U.S.C. Sec. 5103 states, in part, as follows:

> United States coins and currency (including federal reserve notes and circulating notes of federal reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues . . .

———o———

STATEMENT OF THE CASE

This case arises from the judgment of the Court of Appeals of the United States which affirmed and added costs to the judgment of the District Court of the United States. The petitioner was issued a summons, was compelled to serve as a juror in a State court for 2 days, was tendered checks which were not redeemable in gold or silver coin, demanded payment in gold or silver coin from respondents, refused to cash the checks, and filed complaint 85 C 10056 in District Court. The complaint pleaded jurisdiction under the 1st Amendment, 42 U.S.C. Sec. 1983, and 28 U.S.C. Sec. 1343(3) and/or 28 U.S.C. Sec. 1331. Although Judge Getzendanner's order stated that the action arose under 42 U.S.C. Sec. 1983, petitioner who is not an attorney believes the action arose under the Constitution by virtue of his right to petition government for deprivation of his right to receive gold or silver coin pursuant

to Article I, Section 10, clause 1. The respondents are required to act for the State of Illinois, but it is believed they were acting without State authority when they tendered the nonredeemable checks. See *Ex Parte Young*, 209 U.S. 123, 159-160; and *Poindexter v. Greenhow*, 114 U.S. 270, 290 and 293.

28 U.S.C. Sec. 2403(a) may be applicable. The Court of Appeals gave notice to the United States that the constitutionality of 31 U.S.C. Sec. 5103 and Public Law 90-29 were challenged by document dated June 27, 1986.

SUBSTANTIALITY OF FEDERAL QUESTION

This Writ presents an important and substantial question of first impression, as hereinafter described, in that the issue is whether a citizen tendered checks which are not redeemable in gold or silver coin for compelled jury duty service can sue in federal court to make agents of the State pay him in gold or silver coin as mandated by Article I, Section 10, clause 1 of the Constitution.

The order of the Seventh Circuit Court of Appeals conflicts with applicable decisions of the Supreme Court. Article I, Section 10, clause 1 is a mandate against a fiat paper money system. The power of the United States to borrow money pursuant to Article I, Section 8, clause 2 does not relieve Congress of its duty to coin money and regulate the value thereof pursuant to Article I, Section 8, clause 5. Neither the power to borrow money nor the power to regulate the value thereof authorizes agents of a

State to tender payment for compelled jury duty by checks which are payable in nonredeemable federal reserve notes. These different provisions of the Constitution are of equal validity and equal dignity. *Prout v. Starr,* 188 U.S. 537 at 543; *Dick v. U.S.,* 208 U.S. 340 at 353. "No State can invade it; and Congress is incompetent to authorize such invasion." *Edwards v. Kearzey,* 96 U.S. 595, 607. "No Act of Congress can authorize a violation of the Constitution." *Almeida-Sanchez v. U.S.,* 413 U.S. 266 at 272. "No court of justice can be authorized so to construe any clause of the constitution as to defeat its obvious ends, when another construction, equally accordant with the words and sense thereof, will enforce and protect them." *Prigg v. The Commonwealth of Pennsylvania,* 16 Pet. (41 U.S.) 539 at 612. "If any of its provisions are deemed unjust, there is a mode prescribed in the instrument itself by which it may be amended; but while it remains unaltered, it must be construed now as it was understood at the time of its adoption". *Dred Scott v. Sandford,* 19 How. (60 U.S.) 393 at 426. "A constitutional provision should not be construed so as to defeat its evident purpose, but rather so as to give it effective operation and suppress the mischief at which it was aimed." *Jarrolt v. Moberly,* 103 U.S. 580 at 586.

The specific question of whether agents of a State can tender paper not redeemable in gold or silver coins has never been adjudicated by the Supreme Court; however, this Court has stated in dicta that such a tender would be unconstitutional. It should be noted that this country was always on a gold or silver standard until Public Law 90-29 made silver certificates no longer redeemable 1 year after

the act was passed on June 24, 1967. Congress acted without constitutional authority when it passed Public Law 90-29. The often cited case of *Juilliard v. Greenman*, 110 U.S. 421, does not support this law. The only question asked for the court to adjudicate in *Juilliard* was whether notes of the United States, issued in time of war, under acts of Congress declaring them to be legal tender in payment of private debts, and afterwards in time of peace redeemed and paid in gold coin at the Treasury, and then reissued under the act of 1878, can, under the Constitution of the United States, be a legal tender in payment of such debts. The fact that the Court answered yes under the power to borrow money on the credit of the United States is no justification for the position that 31 U.S.C. Sec. 5103 allows the tender of checks payable in nonredeemable notes for State jury duty service. The notes in *Juilliard* were redeemable in specie. It is a historical fact that the national treasury was organized on the basis that gold and silver coins of the United States were to be the standard of value, and the Supreme Court has consistently upheld this fact.

In *Calder v. Bull,* 3 Dall. (3 U.S.) 386 at 390, Justice Chase stated the reason our Founding Fathers added Article I, Sec. 10, cl. 1 to the Constitution:

> The prohibitions not to make any thing but gold and silver coin a tender in payment of debts, and not to pass any law impairing the obligation of contracts, were inserted to secure private rights.

In *Cohens v. Virginia,* 6 Wheat.(19 U.S.) 264 at 403, Mr. Chief Justice Marshal spoke for the court:

> The case of a State which pays off its own debts with paper money, no more resembles this . . . Let it

be that the act discharging the debt is a mere nullity, and that it is still due.

In *Gibbons v. Ogden,* 9 Wheat.(22 U.S.) 1 at 236, the 1st two clauses of Art. I, Sec. 10 were explained by Mr. Justice Johnson:

> This section contains the positive restrictions imposed by the constitution upon state power. The first clause of it specifies those powers which the States are precluded from exercising, even though the congress were to permit them. The second, those which the States may exercise with the consent of congress.

In *Ogden v. Saunders,* 12 Wheat.(25 U.S.) 213 at 265 and 334 & 335, Justice Washington spoke & Chief Justice Marshall spoke with the approval of Justices Duvall and Story:

> "No State shall coin money, emit bills of credit, make any thing but gold and silver coin a tender in payment of debts." These prohibitions, associated with the powers granted to congress "to coin money, and to regulate the value thereof, and of foreign coin," most obviously constitute members of the same family, being upon the same subject & governed by the same policy.
>
> This policy was to provide a fixed and uniform standard of value throughout the United States . . . It is obvious, therefore, that these prohibitions, in the 10th section, are entirely homogeneous, and are essential to the establishment of a uniform standard of value, in the formation and discharge of contracts . . .
>
> The first paragraph of the tenth section of the first article, which comprehends the provision under consideration, contains an enumeration of those cases in which the action of the state legislature is entire-

> ly prohibited. The second enumerates those in which the prohibition is modified. The first paragraph, consisting of total prohibitions . . .
>
> These are laws which make any thing but gold and silver coin a tender in payment of debts . . .
>
> In all these cases, whether the thing prohibited be the exercise of mere political power, or legislative action on individuals, the prohibition is complete and total. There is no exception from it.

In *Craig v. State of Missouri,* 4 Pet. (29 U.S.) 410 at 434 and 442-443, Mr. Chief Justice Marshall spoke for the court and Mr. Justice Johnson spoke:

> The constitution, therefore, considers the emission of bills of credit, and the enactment of tender laws, as distinct operations, independent of each other, which may be separately performed. Both are forbidden . . .
>
> The whole was intended to exclude every thing from use, as a circulating medium, except gold and silver; and to give to the United States the exclusive control over the coining and valuing of the metallic medium. That the real dollar may represent property, and not the shadow of it.

Although petitioner's instant case is not controlled by the principles respecting offsets, the principles respecting offsets and the fact that Public Law 90-29 did not make silver certificates nonredeemable until June 24, 1968 may explain why the instant question has never been adjudicated by the Supreme Court. In *United States v. Robertson,* 5 Pet. (30 U.S.) 641 at 659, the principles respecting offsets were stated when the court stated that "every debtor may pay his creditor with the notes of that creditor. They are equitable and legal tender."

In *Rhode Island v. Massachusetts,* 12 Pet. (37 U.S.) 657 at 724 and 725, the Supreme Court again mentioned the first clause of Article I, Section 10:

> By the first clause of the 10th section of the 1st article of the constitution, there was a positive prohibition against any State . . . no power under the government could make such an act valid, or dispense with the constitutional prohibition.

Article I, Sec. 10, cl. 1 is a constitutional provision which was designed to restrict and to comply with the duty stated by Mr. Justice Daniel for a unanimous court in *United States v. Marigold,* 9 How. (50 U.S.) 560 at 567 and 568:

> They appertain rather to the execution of an important trust invested by the Constitution, and to the obligation to fulfil that trust on the part of the government, namely, the trust and the duty of creating and maintaining a uniform & pure metallic standard of value throughout the Union. The power of coining money and of regulating its value was delegated to Congress by the Constitution for the very purpose, as assigned by the framers of that instrument, of creating and preserving the uniformity and purity of such a standard of value . . .
>
> If the medium which the government was authorized to create and establish could immediately be expelled, and substituted by one it had neither created, estimated, nor authorized,—one possessing no intrinsic value,—then the power conferred by the Constitution would be useless,—wholly fruitless of every end it was designed to accomplish. Whatever functions Congress are, by the Constitution, authorized to perform, they are, when the public good requires it, bound to perform; and on this principle, having emitted a circulating medium, a standard of value

> indispensable for the purposes of the community, & for the action of the government itself, they are accordingly authorized and bound in duty to prevent its debasement and expulsion, and the destruction of the general confidence and convenience, by the influx and substitution of a spurious coin in lieu of the constitutional currency.

In *Bank v. Supervisors,* 7 Wall.(74 U.S.) 26 at 30, the Chief Justice spoke for another unanimous court:

> The dollar note is an engagement to pay a dollar, & the dollar intended is the coined dollar of the United States; a certain quantity in weight and fineness of gold or silver, authenticated as such by the stamp of the government. No other dollars had before been recognized by the legislation of the national government as lawful money.

In *Hepburn v. Griswold,* 8 Wall.(75 U.S.) 603, the Supreme Court held by a 5 to 3 vote that a payee or assignee of a note, made before the 25th of February, 1862, was not obligated by law to accept in payment United States notes, equal in nominal amount to the sum due according to its terms, when tendered by the maker or party bound to pay it. The Chief Justice once again spoke for the court at pages 615 and 616:

> It is not doubted that the power to establish a standard of value by which all other values may be measured, or, in other words, to determine what shall be lawful money and a legal tender, is in its nature, and of necessity, a governmental power . . . In the United States, so far as it relates to the precious metals, it is vested in Congress by the grant of the power to coin money . . .
>
> This power of regulation is a power to determine the weight, purity, form, impression, and denomination

> of the several coins, and their relation to each other, and the relations of foreign coins to the monetary unit of the United States.

After Mr. Justice Greer retired and 2 new justices were added to the court, the Supreme Court acted without precedent in the history of the court (see opinion of the Chief Justice at page 572) when it overruled *Hepburn v. Griswold* in *Knox v. Lee,* 12 Wall.(79 U.S.) 457, by a 5 to 4 vote. Justice Strong spoke for 3 other justices at page 553:

> The legal tender acts do not attempt to make paper a standard of value. We do not rest their validity upon the assertion that their emission is coinage, or any regulation of the value of money; nor do we assert that Congress may make anything which has no value money. What we do assert is, that Congress has power to enact that the government's promises to pay money shall be, for the time being, equivalent in value to the representative of value determined by the coinage acts, or to multiples thereof . . . It is, then, a mistake to regard the legal tender acts as either fixing a standard of value or regulating money values, or making that money which has no intrinsic value.

Justice Bradley filed a concurring opinion. Pages 560 and 561 show why Justice Bradley concurred with the decision:

> It is not an attempt to coin money out of a valueless material, like the coinage of leather or ivory or kowrie shells. It is a pledge of the national credit. It is a promise by the government to pay dollars; it is not an attempt to make dollars. The standard of value is not changed. The government simply demands that its credit shall be accepted and received

> by public and private creditors during the pending exigency . . .
>
> No one supposes that these government certificates are never to be paid—that the day of specie payments is never to return.

The Chief Justice, Justice Clifford, and Justice Field filed separate dissenting opinions totaling 111 pages; and Justice Nelson dissented without filing an opinion. Page 592 of the dissent by Justice Clifford may contain the most important statement:

> Argument to show that the national treasury was organized on the basis that the gold and silver coins of the United States were to be the standard of value is unnecessary, as it is a historical fact which no man or body of men can ever successfully contradict.

Thus 9 justices were of the opinion that paper money could not be made a standard of value. The power to borrow money on the credit of the United States is not the same as the power to coin Money; regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures. The power to borrow money does not allow a State to pay its debts in paper money in violation of Art. I, Sec. 10, cl. 1

CONCLUSION

The Writ should be granted because a substantial question of first impression is squarely before the Court, and the petitioner can't be held to the standards of a lawyer. See *Haines v. Kerner,* 92 S.Ct. 594 at 596.

"It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon." *Boyd v. U.S.*, 116 U.S. 616 at 635. "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." *Miranda v. Arizona,* 384 U.S. 436 at 491.

Respectfully submitted,

JOHN L. CHEEK
In Person
795 Wellington Ave.
Elk Grove, Ill. 60007
(312) 439-2045

APPENDIX "A1"

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
Eastern Division

Case Number: 85 C 10056

John L. Cheek

v.

Thomas P. Beck

JUDGMENT IN A CIVIL CASE

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

[X] Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED
that judgment by dismissal is entered in favor of the defendants and against the plaintiff. Enter judgment.

Date April 21, 1986

H. Stuart Cunningham
Clerk

/s/ Barbara J. Brotherson
(By) Deputy Clerk

APPENDIX "A2"

(Reserved for use by the Court)

ORDER

This action under § 1983 arose when plaintiff John Cheek served as a juror in state court for two days. In reimbursement, the County Treasurer sent Mr. Cheek two checks in the total amount of $34.40. Cheek refused the checks, which offered payment in Federal Reserve Notes, and demanded payment in gold or silver coin pursuant to Article 1, § 10, Cl. 1 of the United States Constitution. The request was refused, and this action followed. The matter is currently before the court on the defendants' motion to dismiss for failure to state a claim. Fed. R.Civ.P. 12(b)(6).

Article I, Section 10, clause 1 of the Constitution states that "no State shall . . . make any Thing but gold and silver Coin a Tender in Payment of Debts." This clause, construed in connection with Article I, Section 8 which gives Congress the power to coin money, was intended to prohibit the states from issuing their own metal or paper currencies and to vest in Congress the exclusive power to determine what will be legal tender throughout the country. *The Legal Tender Cases,* 110 U.S. 421, 446 (1884).

Pursuant to that authority, Congress has declared that "United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues." 31 U.S.C. § 5103. Defendants therefore argue that once Congress determined federal reserve notes to constitute legal tender to

satisfy a debt, the States too could satisfy their debts by offering federal currency.

Plaintiff responds, quite correctly, that if the effect of § 5103 in this case were to cause a constitutional violation, defendants' reliance on the statute would not necessarily be a defense. Plaintiff further suggests that in light of Art. I, § 10, the statute must be construed to apply only to private parties.

The court disagrees. The inherent evil addressed by Article I, § 10, Cl. 1 was to limit state power to *issue* money except as to coin, the value of which is regulated by Congress. Art. I, § 8, cl. 5. The problem was one of non-uniform currency, and not a limitation on the state's ability to pay their own debts through legal tender authorized by Congress. *See, e.g., Chermack v. Bjornson*, 302 Minn. 213, 223 N.W.2d 659 (1974), *cert. denied*, 421 U.S. 914 (1974) (states not constitutionally required to tender payment of income tax refunds in gold or silver coin).

The court therefore concludes that plaintiff has failed to allege a federal claim upon which relief can be granted. Defendants have requested Rule 11 fees for the filing of this frivolous action. *See, e.g., Nixon v. Phillipoff*, 615 F.Supp. 890, 895-97 (N.D. Ind. 1985) (awarding fees in a pro se action about the recognition of legal tender). While the court personally views the action as frivolous, legal research has disclosed no federal precedent directly on point, unless one can extrapolate from cases upholding Congress's power to determine legal tender generally. Therefore, the action is not so clearly foreclosed by prior precedent that Rule 11 fees would be warranted.

/s/ Susan Getzendanner

APPENDIX "B1"

JUDGMENT—WITHOUT ORAL ARGUMENT

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

November 24, 1986

Before
Hon. RICHARD D. CUDAHY, Circuit Judge
Hon. JOHN L. COFFEY, Circuit Judge
Hon. KENNETH F. RIPPLE, Circuit Judge

JOHN L. CHEEK,

Plaintiff-Appellant,

No. 86-1786

vs.

THOMAS P. BECK, GEORGE W. DUNNE, and EDWARD J. ROSEWELL,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois Eastern Division

No. 85 C 10056

Judge Susan Getzendanner

This cause came before the Court for decision on the record from the United States District Court for the Northern District of Illinois, Eastern Division.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the order of this Court entered this date.

APPENDIX "B2"

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

• • •

November 24, 1986

UNPUBLISHED ORDER NOT TO BE CITED PER CIRCUIT RULE 35

Before
Hon. RICHARD D. CUDAHY, Circuit Judge
Hon. JOHN L. COFFEY, Circuit Judge
Hon. KENNETH F. RIPPLE, Circuit Judge

JOHN L. CHEEK,

Plaintiff-Appellant,

No. 86-1786

vs.

THOMAS P. BECK, GEORGE L. DUNNE, and EDWARD J. ROSEWELL,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 85 C 10056

Susan Getzendanner, *Judge*

O R D E R

John Cheek served two days jury duty in the Circuit Court of Cook County and was paid by check the sum of $34.40. Upon receiving payment, Cheek wrote to the appellees demanding payment in gold or silver coins. When the appellees denied Cheek's demand, he filed this suit in

the district court claiming payment by check violated his constitutional rights. The appellants filed motions to dismiss and for attorney's fees under Rule 11. The district court granted the motion to dismiss but refused to assess attorney's fees because, although it found the action frivolous, it found no case law directly on point. Cheek appeals.

Although Cheek alleges violations of 31 U.S.C. § 5103 and Article 1, § 10 of the constitution, the facts alleged fail to establish jurisdiction under 28 U.S.C. §§ 1331 and 1343 (3) or 42 U.S.C. § 1983. The claim is not colorable, and a colorable claim is a minimum requisite. Cheek argues that the appellees have denied him his right to payment for jury duty because he was not paid in legal tender as defined in those provisions. As Judge Lee explained in *Nixon v. Phillipoff*, 615 F. Supp. 890, 893-94 (N.D. Ind. 1985), and *Nixon v. Individual Head of St. Joseph Mortgage Co.*, 614 F. Supp. 898 (N.D. Ind. 1985), this argument is absurd. The state may pay its jurors with negotiable instruments, i.e., checks. A check may be exchanged for federal reserve notes in an amount equal to the value stated on the check, and federal reserve notes are legal tender. *See, e.g., Birkenstock v. Commissioner of Internal Revenue*, 646 F.2d 1185, 1186 (7th Cir. 1981). Because the district court properly held that Cheek did not have to be paid in gold or silver coins, the court's order dismissing Cheek's suit is affirmed.

AFFIRMED.

No. 86-1301

In The

Supreme Court of the United States

October Term, 1986

JOHN L. CHEEK,

Petitioner,

vs.

THOMAS P. BECK, GEORGE W. DUNNE, and EDWARD J. ROSEWELL,

Respondents.

On Writ of Certiorari to the Court of Appeals of the United States for the Seventh Circuit

SUPPLEMENTAL BRIEF

JOHN L. CHEEK
In Proper Person
795 Wellington Ave.
Elk Grove, Ill. 60007
(312) 439-2045

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

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October Term, 1986

JOHN L. CHEEK,

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Respondents.

On Writ of Certiorari to the Court of Appeals of the United States for the Seventh Circuit

SUPPLEMENTAL BRIEF

"The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written." *Marbury vs. Madison,*

1 Cranch (5 U.S.) 137 at 176 (1803). "A constitution is framed for ages to come, and is designed to approach immortality as nearly as human institutions can approach it." *Cohens vs. Virginia,* 6 Wheat (19 U.S.) 264 at 387 (1821). "The government, then, of the United States can claim no powers which are not granted to it by the constitution." *Martin vs. Hunter,* 1 Wheat (14 U.S.) 304 at 326 (1816).

Petitioner is a sovereign freeman from the bloodline of Patrick Henry, George Washington, and Thomas Jefferson. Petitioner demands Respondents cite their constitutional authority to tender something other than gold or silver coins.

Respectfully submitted,

JOHN L. CHEEK
In Proper Person
795 Wellington Ave.
Elk Grove, Ill. 60007
(312) 439-2045